



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

August 10, 2021

BY ECF AND EMAIL

Hon. John G. Koeltl
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Arthur Hayes, et al., 20 Cr. 500 (JGK)

Dear Judge Koeltl:

The Government writes in advance of the conference currently scheduled for 3:00 p.m. on Wednesday August 11, 2021 to provide a Court with an update on the status of the Government's document collection and production as it relates to the motions before the Court.

With respect to the files of the CFTC,¹ as the Government noted in its response to the defendants' CFTC discovery motion, and in order to assist in the preparation of the defense, the Government has voluntarily requested from the CFTC: "(1) any documents obtained from third parties (including, in an abundance of caution and to avoid missing any materials, documents that have already been produced to the USAO); and (2) the CFTC's notes or memoranda of witness interviews, including CFTC interviews of Witness-1 and any other witnesses."

The CFTC has agreed to provide the Government with documents it obtained from third parties, and is preparing a hard drive to provide the USAO. The Government understands from its conversations with the CFTC that the vast majority of these materials are BitMEX corporate records or other third-party documents that were previously provided to the USAO (and re-produced to the defense in discovery in this case). However, those materials are being re-produced in full to the USAO in an abundance of caution. The CFTC estimates that the hard drive of these materials will be delivered to the USAO on Thursday August 12, 2021. The Government will then process the materials and produce them promptly to the defense. The CFTC is still awaiting a decision from its foreign regulatory counterparts in the Seychelles, Hong Kong, and Bermuda on whether it may provide the USAO with access to the small number of documents that it obtained from those regulators. Here, again, the USAO understands from the CFTC that the vast majority of these documents are BitMEX corporate records.

The CFTC has also agreed to provide the USAO with notes and memoranda of the witness interviews it conducted without the USAO's involvement as part of its parallel investigation, including for Witness-1 and other witnesses. The CFTC is reviewing those materials for work product and

¹ The abbreviated terms used herein have the same meaning are defined in the Government's response brief.

privilege, and estimates that it will have the materials ready to produce to the USAO in the next two to three weeks. Once it receives these witness statements, the Government will review them for any *Brady* material, which the Government will disclose promptly to the defense. If and when the Government determines that it intends to call any of the witnesses at trial, the Government will produce 3500 and *Giglio* material from the witness statements consistent with its discovery obligations.

The Government also provides the following update on the Witness-1 Devices. With respect to the Witness-1 Hard Drive, the Government is in the process of producing to the defense all but seven unique files (two copies of each, for a total of fourteen files) from the Hard Drive. Those files include personal information, including medical information and personal financial information, relating to Witness-1 and Witness-1's family members. These documents are not BitMEX corporate records and do not reflect any Rule 16, *Brady*, 3500, or *Giglio* material. Otherwise, the entirety of the Hard Drive will be produced to the defense. As noted in the Government's response to the Witness-1 Device motion, the Government first identified materials deemed responsive to the Government's search warrant for the Hard Drive. At the request of the defense, in order to facilitate the defense's trial preparations, the Government has coordinated with counsel for BitMEX and Witness-1 to obtain consent to this broader production of materials from the Hard Drive, consisting of everything but the fourteen Witness-1 personal files described above. These materials will be produced to the defense in the next few weeks. The Government expects to produce the set of materials deemed responsive to the search warrant within the next week.

With respect to the Witness-1 iPhone 6s, as described in the Government's response to the Witness-1 Device Motion, the Government has already produced to the defense those materials deemed responsive to the Government's search warrant. On August 9, 2021, the Government made a supplemental production of any materials relevant to BitMEX, even if not responsive to the search warrant. The Government intends to make a final supplemental production of materials that could be used to impeach Witness-1 or any other Government witness within the next week.

Respectfully submitted,

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